

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 219

HOUSE BILL 2194

AN ACT

AMENDING SECTIONS 11-952.01 AND 41-621.01, ARIZONA REVISED STATUTES; RELATING
TO PUBLIC AGENCY JOINT EXERCISE OF POWERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-952.01, Arizona Revised Statutes, is amended to
3 read:

4 11-952.01. Public agency pooling of property, fidelity,
5 liability, workers' compensation, life, health,
6 accident and disability coverage; exemptions;
7 board of trustees; contract; termination; audit;
8 insolvency; definition

9 A. In addition to other authority granted pursuant to this title, two
10 or more public agencies may enter into contracts or agreements pursuant to
11 this article for the joint purchasing of insurance, including prepaid legal
12 insurance or reinsurance, or to pool retention of their risks for property,
13 fidelity and liability losses and to provide for the payment of such property
14 loss, fidelity loss, prepaid legal insurance or claim of liability made
15 against any member of the pool, including any elected or appointed official,
16 officer or employee covered by the pool, on a cooperative or contract basis
17 with one another or may jointly form a nonprofit corporation or enter into a
18 trust agreement to carry out the provisions of this section in their behalf
19 directly or by contract with a private party.

20 B. In addition to other authority granted pursuant to this title, two
21 or more public agencies may enter into contracts or agreements pursuant to
22 this article to establish a workers' compensation pool to provide for the
23 payment of workers' compensation claims pursuant to title 23, chapter 6 on a
24 cooperative or contract basis with one another or may jointly form a
25 nonprofit corporation or enter into a trust agreement to carry out the
26 provisions of this section in their behalf directly or by contract with a
27 private party. A workers' compensation pool established pursuant to this
28 subsection may provide coverage for workers' compensation, employers'
29 liability and occupational disease claims. A workers' compensation pool is
30 subject to approval as a self-insurer by the industrial commission pursuant
31 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
32 chapter 6 and rules adopted pursuant to that chapter in addition to the
33 requirements of this section. The industrial commission, by rule, resolution
34 or order, may adopt requirements for the administration of a workers'
35 compensation pool under this subsection, including separation or commingling
36 of funds, accounting, auditing, reporting, actuarial standards and
37 procedures.

38 C. In addition to other authority granted pursuant to this title, two
39 or more public agencies may enter into contracts or agreements for the joint
40 purchase of life insurance, disability insurance, accident insurance or
41 health benefits plan insurance or may pool retention of their risks of loss
42 for life, disability, health or accident claims made against any public
43 agency member of the pool or to jointly provide the health and medical
44 services authorized in section 36-2907. Public agencies may establish pools
45 for the purposes of this subsection by any of the following methods:

- 1 1. On a cooperative or contract basis.
- 2 2. By the formation of a nonprofit corporation.
- 3 3. By contracts or intergovernmental agreements with the Arizona
- 4 health care cost containment system administration.

- 5 4. By the execution of a trust agreement directly by the agencies or
- 6 by contracting with a third party.

7 D. In addition to other authority granted pursuant to this title, two
8 or more public agencies may enter into contracts or agreements pursuant to
9 this article for the joint purchasing of insurance for property, liability or
10 workers' compensation losses or to pool retention of their risks for property
11 and liability loss to cover the public agency, its elected officials and
12 employees and the contractor and subcontractor of every tier engaged in the
13 performance of a construction project for the public agency. Public agencies
14 may establish pools for the purpose of this subsection by any of the
15 following methods:

- 16 1. On a cooperative or contract basis.
- 17 2. By the formation of a nonprofit corporation.
- 18 3. By the execution of a trust agreement directly by the agencies or
- 19 by contracting with a third party.

20 E. Section 10-11301 does not apply to nonprofit corporations formed
21 pursuant to this section.

22 F. Title 41, chapter 23 does not apply to the procurement of insurance
23 or reinsurance, or to the procurement of the services provided for in
24 subsection K, paragraph 8 of this section, by any pool established pursuant
25 to this section.

26 G. Title 43 does not apply to any pool established pursuant to this
27 section. Any pool established pursuant to this section is exempt from
28 taxation under title 43.

29 H. Each pool shall be operated by a board of trustees consisting of at
30 least three persons who are elected officials or employees of public entities
31 within this state. The board of trustees shall notify the director of the
32 department of insurance of the existence of the pool and shall file with the
33 director and with the attorney general a copy of the intergovernmental
34 agreement or contract. The attorney general shall file a copy of the
35 agreement or contract with the secretary of state as required by section
36 11-952. The board of trustees of each group shall do all of the following:

- 37 1. Establish terms and conditions of coverage within the pool
- 38 including exclusions of coverage.
- 39 2. Ensure that all claims are paid promptly.
- 40 3. Take all necessary precautions to safeguard the assets of the
- 41 group.
- 42 4. Maintain minutes of its meetings.
- 43 5. Designate an administrator to carry out the policies established by
- 44 the board of trustees and to provide day-to-day management of the group and

1 delineate in the written minutes of its meetings the areas of authority it
2 delegates to the administrator.

3 6. If the pool is a workers' compensation pool, file a copy of the
4 agreement with the director of the industrial commission.

5 I. If the pool includes private, nonprofit educational institutions,
6 each private, nonprofit educational institution shall post a bond, cash
7 deposit or other comparable financial security in an amount that is equal to
8 at least one and one-half times the amount of the private, nonprofit
9 educational institution's annual premium to ensure payment of the school's or
10 institution's legal liabilities and other obligations if the pool is
11 determined to be insolvent or is otherwise found to be unable to discharge
12 the pool's legal liabilities and other obligations pursuant to subsection N
13 of this section.

14 J. The board of trustees shall not:

15 1. Extend credit to individual members for payment of a premium,
16 except pursuant to payment plans established by the board.

17 2. Borrow any monies from the group or in the name of the group except
18 in the ordinary course of business.

19 K. In addition to the requirements of section 11-952, a contract or
20 agreement made pursuant to ~~subsection A~~ of this section shall contain the
21 following:

22 1. A provision for a system or program of loss control.

23 2. A provision for termination of membership including either:

24 (a) Cancellation of individual members of the pool by the pool.

25 (b) Election by an individual member of the pool to terminate its
26 participation.

27 3. A provision requiring the pool to pay all claims for which each
28 member incurs liability during each member's period of membership.

29 4. A provision stating that each member is not relieved of its
30 liability incurred during the member's period of membership except through
31 the payment of losses by the pool or by the member.

32 5. A provision for the maintenance of claim reserves equal to known
33 incurred losses and an estimate of incurred but not reported claims.

34 6. A provision for a final accounting and settlement of the
35 obligations of or refunds to a terminating member to occur when all incurred
36 claims are concluded, settled or paid.

37 7. A provision that the pool may establish offices where necessary in
38 this state and employ necessary staff to carry out the purposes of the pool.

39 8. A provision that the pool may retain legal counsel, actuaries,
40 auditors, engineers, private consultants and advisors.

41 9. A provision that the pool may make and alter bylaws and rules
42 pertaining to the exercise of its purpose and powers.

43 10. A provision that the pool may purchase, lease or rent real and
44 personal property it deems necessary.

1 11. A provision that the pool may enter into a financial services
2 agreement AGREEMENTS with banks and OTHER FINANCIAL INSTITUTIONS, that it
3 may issue checks in its own name AND THAT IT MAY INVEST ITS MONIES IN EQUITY
4 SECURITIES, MUTUAL FUNDS AND INVESTMENT FUNDS REGISTERED WITH THE UNITED
5 STATES SECURITIES AND EXCHANGE COMMISSION, DEBT OBLIGATIONS AND ANY ELIGIBLE
6 INVESTMENT PERMITTED BY SECTION 35-323.

7 L. A pool or a terminating member shall provide at least ninety days'
8 written notice of the termination or cancellation. A workers' compensation
9 pool shall notify the industrial commission of the termination or
10 cancellation of a member thirty days before the termination or cancellation
11 of the member.

12 M. The pool shall be audited annually at the expense of the pool by a
13 certified public accountant, with a copy of the report submitted to the
14 governing body or chief executive officer of each member of the pool and to
15 the director of the department of insurance. The board of trustees of the
16 pool shall obtain an appropriate actuarial evaluation of the claim reserves
17 of the pool including an estimate of the incurred but not reported
18 claims. The department of insurance shall examine each public agency pool
19 once every ~~three~~ FIVE years. The director of the department of insurance may
20 examine a public agency pool sooner than ~~three~~ FIVE years from the preceding
21 examination if the director has reason to believe that the pool is
22 insolvent. The costs of any examination shall be paid by the pool subject to
23 the examination.

24 N. If, as a result of the annual audit or an examination by the
25 director of the department of insurance, it appears that the assets of the
26 pool are insufficient to enable the pool to discharge its legal liabilities
27 and other obligations, the director of the department of insurance shall
28 notify the administrator and the board of trustees of the pool of the
29 deficiency and the director's list of recommendations to abate the
30 deficiency, including a recommendation not to add any new members until the
31 deficiency is abated. If the pool fails to comply with the recommendations
32 within sixty days after the date of the notice, the director shall notify the
33 chief executive officer or the governing bodies, if any, of the members of
34 the pool, the governor, the president of the senate and the speaker of the
35 house of representatives that the pool has failed to comply with the
36 recommendations of the director.

37 O. If a pool is determined to be insolvent or is otherwise found to be
38 unable to discharge its legal liabilities and other obligations, each
39 agreement or contract shall provide that the members of the pool shall be
40 assessed on a pro rata basis as calculated by the amount of each member's
41 annual contribution in order to satisfy the amount of deficiency. The
42 assessment shall not exceed the amount of each member's annual contribution
43 to the pool.

44 P. A pool established pursuant to this section may make available
45 programs providing for insurance coverages described in subsections A, B and

1 C of this section to those charter schools governed by section 15-183,
2 subsection M and, except for a workers' compensation pool, to private,
3 nonprofit educational institutions.

4 Q. IN ADDITION TO THE AUTHORITY SET FORTH IN THIS TITLE, A POOL
5 ESTABLISHED PURSUANT TO THIS SECTION MAY INVEST PUBLIC MONIES ON BEHALF OF
6 POOL MEMBERS, BUT ANY SUCH INVESTMENTS SHALL BE LIMITED TO THOSE PERMITTED BY
7 SECTION 35-323. A POOL ESTABLISHED PURSUANT TO THIS SECTION MAY NOT INVEST
8 MONIES THAT ARE REQUIRED BY LAW TO BE DEPOSITED WITH A COUNTY TREASURER.

9 R. A POOL ESTABLISHED PURSUANT TO THIS SECTION MAY, BY THE ADOPTION OF
10 A RESOLUTION OF CONTINUING EFFECT, AUTHORIZE AND REQUEST THE STATE TREASURER
11 TO INVEST FUNDS FOR THE POOL PURSUANT TO SECTION 35-326.

12 Q. S. For the purposes of this section, "health benefits plan" means
13 a hospital or medical service corporation policy or certificate, a health
14 care services corporation contract, a multiple employer welfare arrangement
15 or any other arrangement under which health and medical benefits and services
16 are provided to two or more persons.

17 Sec. 2. Section 41-621.01, Arizona Revised Statutes, is amended to
18 read:

19 41-621.01. Contractors or subcontractors; pooling of property,
20 liability and workers' compensation coverage;
21 exemptions; board of trustees; contract;
22 termination; audit; insolvency

23 A. Pursuant to section 41-621, subsection D and section 41-622.01 two
24 or more contractors or subcontractors licensed to do work for this state or
25 any political subdivision of this state may with the approval of the
26 department of administration enter into contracts or agreements pursuant to
27 this section for the joint purchase of insurance, to pool retention of their
28 risks for property and liability losses and to provide for the payment of the
29 property loss or claim of liability made against any member of the pool on a
30 cooperative or contract basis with one another or may jointly form a
31 nonprofit corporation or enter into a trust agreement to carry out the
32 provisions of this section in their behalf directly or by contract with a
33 private party, if the department of administration has determined to sanction
34 such a pool. Two or more contractors may also enter into contracts or
35 agreements pursuant to this section to establish a workers' compensation pool
36 to provide for the payment of workers' compensation claims pursuant to title
37 23, chapter 6 on a cooperative or contract basis with one another or may
38 jointly form a nonprofit corporation or enter into a trust agreement to carry
39 out the provisions of this section in their behalf directly or by contract
40 with a private party. A workers' compensation pool established pursuant to
41 this subsection may provide coverage for workers' compensation, employers'
42 liability and occupational disease claims. A workers' compensation pool is
43 subject to approval as a self-insurer by the industrial commission pursuant
44 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
45 chapter 6 and rules adopted pursuant to that chapter in addition to the

1 requirements of this section. The industrial commission, by rule, resolution
2 or order, may adopt requirements for the administration of a workers'
3 compensation pool under this subsection, including separation or commingling
4 of funds, accounting, auditing, reporting, actuarial standards and
5 procedures.

6 B. In addition to other authority granted pursuant to this title, two
7 or more contractors or subcontractors licensed to do work for this state or
8 any political subdivision of this state may enter into contracts or
9 agreements for the joint purchase of life insurance, disability insurance,
10 accident insurance or health benefits plan insurance, to pool retention of
11 their risks of loss for life, disability, health or accident claims made
12 against any contractor or subcontractor member of the pool or to jointly
13 provide the health and medical services authorized in section
14 36-2907. Contractors and subcontractors may establish pools for the purposes
15 of this subsection by any of the following methods:

- 16 1. On a cooperative or contract basis.
- 17 2. By the formation of a nonprofit corporation.
- 18 3. By a contract or intergovernmental agreement with the Arizona
19 health care cost containment system administration.
- 20 4. By the execution of a trust agreement directly by the contractors
21 and subcontractors or by contracting with a third party.

22 C. Contractors or subcontractors of a political subdivision of this
23 state that is a member of a risk retention pool authorized under title 11 may
24 obtain life insurance, disability insurance, accident insurance or health
25 benefits plan insurance coverage directly from that political subdivision if
26 coverage is available and as authorized by section 11-952.01, subsection C.

27 D. Section 10-11301 does not apply to nonprofit corporations formed
28 pursuant to this section.

29 E. Chapter 23 of this title does not apply to the procurement of
30 insurance or to the procurement of the services provided for in subsection I,
31 paragraph 8 of this section by any pool established pursuant to this section.

32 F. Title 43 does not apply to any pool established pursuant to this
33 section. Any pool established pursuant to this section is exempt from
34 taxation under title 43.

35 G. Each pool shall be operated by a board of trustees consisting of at
36 least five members. The board of trustees of each group shall do all of the
37 following:

- 38 1. Establish terms and conditions of coverage within the pool
39 including exclusions of coverage.
- 40 2. Ensure that all claims are paid promptly.
- 41 3. Take all necessary precautions to safeguard the assets of the
42 group.
- 43 4. Maintain minutes of its meetings.
- 44 5. Designate an administrator to carry out the policies established by
45 the board of trustees and to provide day to day management of the group and

1 delineate in the written minutes of its meetings the areas of authority it
2 delegates to the administrator.

3 6. Notify the director of the department of insurance of the existence
4 of the pool and file a copy of the agreement with him THE DIRECTOR and with
5 the attorney general.

6 7. If the pool is a workers' compensation pool, file a copy of the
7 agreement with the director of the industrial commission.

8 H. The board of trustees shall not:

9 1. Extend credit to individual members for payment of a premium except
10 pursuant to payment plans established by the board.

11 2. Borrow any monies from the group or in the name of the group except
12 in the ordinary course of business.

13 I. A contract or agreement made pursuant to subsection A of this
14 section shall contain the following:

15 1. A provision for a system or program of loss control.

16 2. A provision for termination of membership including either:

17 (a) Cancellation of individual members of the pool by the pool.

18 (b) Election by an individual member of the pool to terminate its
19 participation.

20 3. A provision requiring the pool to pay all claims for which each
21 member incurs liability during each member's period of membership.

22 4. A provision stating that each member is not relieved of its
23 liability incurred during the member's period of membership except through
24 the payment of losses by the pool or by the member.

25 5. A provision for the maintenance of claims reserves equal to known
26 incurred losses and an estimate of incurred but not reported claims.

27 6. A provision for a final accounting and settlement of the
28 obligations of or refunds to a terminating member to occur when all incurred
29 claims are concluded, settled or paid.

30 7. A provision that the pool may establish offices where necessary in
31 this state and employ necessary staff to carry out the purposes of the pool.

32 8. A provision that the pool may retain legal counsel, actuaries,
33 auditors, engineers, private consultants and advisors.

34 9. A provision that the pool may make and alter bylaws and rules
35 pertaining to the exercise of its purpose and powers.

36 10. A provision that the pool may purchase, lease or rent real and
37 personal property it deems necessary.

38 11. A provision that the pool shall enter into a financial services
39 agreement with banks and that it may issue checks in its own name.

40 J. A pool or a terminating member shall provide at least ninety days'
41 written notice of the termination or cancellation. A workers' compensation
42 pool shall notify the industrial commission of the termination or
43 cancellation of a member thirty days before the termination or cancellation
44 of the member.

1 K. The pool shall be audited annually at the expense of the pool by a
2 certified public accountant, with a copy of the report submitted to the
3 governing body or chief executive officer of each member of the pool and to
4 the director of the department of insurance. The board of trustees of the
5 pool shall obtain an appropriate actuarial evaluation of the claim reserves
6 of the pool including an estimate of the incurred but not reported
7 claims. The department of insurance shall examine each contractor pool once
8 every ~~three~~ FIVE years. The director of the department of insurance may
9 examine a contractor pool sooner than ~~three~~ FIVE years from the preceding
10 examination if the director has reason to believe that the pool is
11 insolvent. The costs of any examination shall be paid by the pool subject to
12 the examination.

13 L. If, as a result of the annual audit or an examination by the
14 director of the department of insurance, it appears that the assets of the
15 pool are insufficient to enable the pool to discharge its legal liabilities
16 and other obligations, the director of the department of insurance shall
17 notify the administrator and the board of trustees of the pool of the
18 deficiency and provide the director's list of recommendations to abate the
19 deficiency, including a recommendation not to add any new members until the
20 deficiency is abated. If the pool fails to comply with the recommendations
21 within sixty days after the date of the notice, the director shall notify the
22 chief executive officer or the governing bodies, if any, of the members of
23 the pool, the governor, the president of the senate and the speaker of the
24 house of representatives that the pool has failed to comply with the
25 recommendations of the director.

26 M. If a pool is determined to be insolvent or is otherwise found to be
27 unable to discharge its legal liabilities and other obligations, each
28 agreement or contract shall provide that the members of the pool shall be
29 assessed on a pro rata basis as calculated by the amount of each member's
30 annual contribution in order to satisfy the amount of deficiency. The
31 assessment shall not exceed the amount of each member's annual contribution
32 to the pool.

33 N. If a workers' compensation pool fails to comply with title 23,
34 chapter 6 or rules adopted pursuant to that chapter, the director of the
35 industrial commission shall immediately notify the director of the department
36 of administration and the director of the department of insurance.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House March 14, 2005,

by the following vote: 48 Ayes,

7 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 18, 2005,

by the following vote: 25 Ayes,

4 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 8:45 o'clock a M.

Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:30 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:33 o'clock P. M.

Secretary of State